IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 2693 of 2006
Date of decision : 15.1.2007

Inderjit Singh

.....Petitioner.

Versus

Gurjant Singh & Anr.

.....Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. J.S. Brar, Advocate
for the petitioner.

Mr. H.R. Nohria, Advocate
for the respondents.

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VINOD K. SHARMA,J.(ORAL)

The present revision petition has been filed against the order dated 9.2.2006 passed by the learned Addl. Civil Judge (Sr. Divn.), Dhuri vide which application filed by the petitioner under Order 6 Rule 17 read with section 151 C.P.C. for amendment of written statement has been declined.

By way of amendment the learned counsel for the petitioner has sought to incorporate the following preliminary objection:-

> "That the plaintiffs have not filed the suit with clean hands and they have suppressed the true facts from the Hon'ble Court. Plaintiff No.1 was married to Baljit Kaur d/o Kartar Singh resident of village Isewal, Tehsil Nabha, in the year 1987. As such, plaintiff Gurjant Singh along with his legal wedded wife Baljit Kaur filed a civil suit No. 11/2-188 titled as Gurjant Singh and another Vs. Ujjagar Singh in the Court of Sh. B.K. Gaur, Sub Judge

Ist Class, Dhuri, for declaration that Gurjant Singh is owner in possessin of 7/9 share and Baljit Kaur is owner in possession of 2/9 share of land measuring 58 bighas 10 biswas i.e. ½ share of 117 bighas 1 biswa. This suit was decreed in favour of Gurjant Singh and his legal wedded wife Baljit Kaur on 3.3.1988. Mutation on the basis of this decree was duly sanctioned and incorporated in the Revenue record. After the Baljit Kaur left the society of her husband Gurjant Singh and went to village Baur Kalan and now she is residing with Daljit Singh of that village. As such, Baljit Kaur was owner in possession of land in village Ghanauri Kalan. After perusal of the Revenue record and after verifying the actual possession of Baljit Kaur on the spot, defendant Inderjit Singh purchased the share of Baljit Kaur vide registered sale deed No. 647 dated 9.6.2004 after paying the full consideration through this sale-deed to Baljit Kaur. So, the defendant Inderjit Singh is bonafide purchaser for valuable consideration and is in possession of this land being its owner since the date of sale deed. Plaintiff No.1 contracted a second marriage with Hardeep Kaur d/o Chamkaur Singh resident of village Sultanpur, tehsil Dhuri, about nine years ago without divorcing his first wife Baljit Kaur. Now plaintiff No.1 has shown his second wife Hardeep Kaur to be Baljit Kaur in this case and as such has pleaded her as plaintiff No.2 in place of

real Baljit Kaur, whereas the actual Baljit Kaur has never filed the present suit, nor signed the plaint, vakalatnama etc. nor gave any power of attorney to plaintiff No.2 or any other person. As such, the present suit is the result of impersonation and fraud. In the year 1988, Hardeep Kaur was minor and was a school going child. Real Baljit Kaur who is daughter of Kartar Singh and in whose favour of the Civil Court has decreed the suit No. 11 of 2.1.1988 titled as Gurjant Singh and another Vs. Ujjagar Singh on 3.3.1988 and from which defendant Inderjit Singh has purchased the land has not filed the present suit. Hardeep Kaur is personating herself to be Baljit Kaur in this case as plaintiff No.2, so the plaintiffs are playing fraud with the court. As such, they have no locus standi or cause of action to challenge the sale deed executed by real Baljit No.1, so criminal proceedings may kindly be initiated against the plaintiffs and their suit may kindly be dismissed with exemplary costs."

The petitioner has also sought to amend paras No.1, 4, 2 and No.5 respectively to the following effect :-

Para No.1.

"That the sale deed under challenge was executed by Baljit Kaur d/o Kartar Singh regarding her share with her own free will legally and rightly for valuable consideration and the plaintiff No.1 has no legal right to challenge the same. The plaintiff No.2 is not real Baljit

Kaur d/o Kartar Singh and she is actually Hardeep Kaur d/o Chamkaur Singh."

Para No.4.

"That sale deed executed by Baljit Kaur d/o Kartar Singh regarding her 1/9 share is legal, valid and for valuable consideration and the same was executed by her with her own free will be appearing personally before Sub Registrar, Sherpur. The plaintiffs have filed the present suit by stating wrong facts and concealing the true facts from the Hon'ble Court therefore, the plaintiffs are guilty of concealment of facts and are not entitled to any relief from the Hon'ble Court.

Para No.2.

"That para no.2 of the plaint is wrong and denied. Gurjant Singh was married to Baljit Kaur d/o Kartar Singh resident of village Isewal prior to the year 1988 and being wife of Gurjant Singh a decree was passed in civil suit No. 11 of 2.1.1988 titled as Gurjant Singh Vs. Ujjagar Singh by the Court of Sub Judge Ist Class, Dhuri on 3.3.1988 in her favour. It is absolutely wrong that a son and a daughter were born out of the wed lock. It is pertinent to mention here that Gurjant Singh contracted a second marriage with a lady namely Hardeep Kaur D/o Chamkaur Singh resident of village Sultanpur, Tehsil Dhuri, about 9 years ago. Out of that wedlock, one son and one daughter have taken birth. It is that Hardeep

Kaur who was thumb marked this plaint personating her to be Baljit Kaur."

Para No.5.

"Contents of para 5 of the plaint are wrong and hence denied. Since the sale deed has been executed by Baljit Kaur d/o Kartar Singh plaintiff No.2 with her own free will for valuable consideration by appearing personally, so the question of depriving her from her valuanble property does not arise. In fact, the present suit has been filed by plaintiff No.1 with mala fide intention with the connivance of Hardeep Kaur just to harass the bona fide purchaser."

The said application has been rejected merely on the ground that in the written statement filed by the petitioner he had admitted that the property has been sold to the petitioner by plaintiff No.2 i.e. Baljit Kaur and, therefore, he cannot be allowed now to withdraw the admission made by him.

The learned counsel for the petitioner contends that the amendment sought was necessitated as subsequent to filing of written statement he came to know about certain facts which were not in his knowledge especially when plaintiff No.2 was impersonated as Baljit Kaur whereas she is not Baljit Kaur. The learned trial Court ,therefore, was wrong in coming to the conclusion that the petitioner-defendant was withdrawing the admission. Even by way of amendment the petitioner's stand was that Baljit Kaur wife of plaintiff No.1 had in fact sold the property to him and he was bona fide purchaser for consideration. The only amendment sought was

that plaintiff No.2 was in fact not Baljit Kaur and consequences thereof, therefore, it could not be said that there was withdrawal of admission. The amendment sought was necessary for just and proper adjudication of the case and also for incorporating the facts which were not in the knowledge of the petitioner at the time of filing the written statement. The impugned order cannot be sustained. The revision is accordingly allowed. The impugned order is set aside and the application under Order 6 Rule 17 read with Section 151 C.P.C. is allowed.

15.1.2007. **(VINOD K. SHARMA)**
'sp' **JUDGE**